

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B03

PLR-111883-16

Date:

September 26, 2016

LEGEND:

Parent =

Subsidiary =

Partnership =

Operator =

Lessor =

Advisor =

Investment Company =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

Dear :

This letter responds to your letter dated February 22, 2016, and subsequent correspondence, submitted on behalf of Parent and Subsidiary (collectively, “Taxpayers”). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (the “Regulations”) to jointly make an election under section 856(l) of the Internal Revenue Code (“Code”) to treat Subsidiary as a taxable REIT subsidiary (“TRS”) of Parent effective Date 1.

FACTS

Parent, a limited liability company, represents that it has elected to be taxed as a real estate investment trust (“REIT”). Parent owns a a% interest in Partnership, a limited liability company. Operator, a limited liability company, holds the remaining b% interest in Partnership. Partnership directly owns Subsidiary and Lessor, both limited liability companies. Parent is a calendar year taxpayer on the accrual method of accounting.

Partnership formed Subsidiary on Date 1 to lease the hotel Lessor owns. Partnership owns c other pairs of lessors and lessees that own and lease hotel properties. Parent represents that it intended to elect to treat all of its lessees as corporations on Form 8832, *Entity Classification Election*, and to jointly elect to treat these lessees as TRSs on Form 8875, *Taxable REIT Subsidiary Election*.

On Date 2, the Chief Financial Officer of both Partnership and Subsidiary (“CFO”) provided Advisor with a list of Partnership’s d pairs of lessors and lessees so that Advisor would prepare and file a Form 8832 and Form 8875 for each lessee. Advisor prepared Forms 8832 and 8875 for c lessees; however, the list misstated Subsidiary’s name and Advisor failed to clarify Subsidiary’s name. Consequently, Advisor neglected to file Forms 8832 and 8875 for Subsidiary. On Date 3, the CFO and Parent’s authorized representative signed Forms 8832 and 8875 for the other c lessees. Neither the CFO nor the authorized representative noticed the omission of Forms 8832 and 8875 for Subsidiary.

On Date 4, Parent’s primary investor, Investment Company, requested confirmation that all of the lessees had elected to be treated as TRSs. The CFO forwarded this request to Advisor. Advisor responded with copies of Forms 8832 and 8875 for Partnership’s other c lessees. Advisor and Subsidiary’s Chief Financial Officer subsequently determined neither Form 8832 nor Form 8875 had been filed for Subsidiary. Subsidiary then filed a Form 8832 under Rev. Proc. 2009-41, which

provides for late elections based upon reasonable cause. The effective date of the Form 8832 was Date 1.

Taxpayers make the following additional representations in connection with their request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service ("Service").
2. Granting the relief requested will not result in Taxpayers having a lower tax liability in the aggregate for all years to which the election applies than they would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayers do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayers did not choose to not file the election.
5. Taxpayers are not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to the taxpayers.
6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayers for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Taxpayers have been provided as required by section 301.9100-3(e) of the Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, *Taxable REIT Subsidiary Election*. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year.

However, the effective date of the election depends on when the Form 8875 is filed. The instructions further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election

than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayers have shown good cause for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Parent effective as of Date 1. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein. Except as provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether Parent otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayers is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Julanne Allen
Assistant Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes